

CONTRACT

HCA Contract Number:K1474

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THIS AGREEMENT made by and be	etween Was	shinaton	State	Healt	<u>l</u> th Care Auth	ority	hereina	ofter referred to
as "HCA," and the party whose name		•				•		
CONTRACTOR NAME					OR doing busin			
Gartner					•		. ,	
CONTRACTOR ADDRESS			MACI I	INICTO	NI LINIEODM		1	
CONTRACTOR ADDRESS 980 9 th Street					ON UNIFORM DENTIFIER (UI	31)		
Sacramento, CA 95814			601-42			,		
CONTRACTOR CONTACT	CONTRA	ACTOR TE	LEPHO	ONE	CONTRACTO	OR E-M	AIL ADD	RESS
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HCA PROGRAM					DIVISION/SEC	CTION		
Enterprise Technology Services				ETS	CONTACT AD	DDE00		
HCA CONTACT NAME AND TITLE John Specht					CONTACT AD 3OX 45512	DRESS	•	
John Specific					pox 43312 pia, WA 9850)4		
HCA CONTACT TELEPHONE				<u> </u>	HCA CONTAC		L ADDRE	SS
(360)584-8417			1		john.specht	hca.۱@hca.۱	wa.gov	
IS THE CONTRACTOR A SUBRECIPIENT F THIS CONTRACT?	FOR PURPOS	SES OF	CFI	DA NU	IMBER(S)		_	FFATA Form
YES ⊠NO				,	, ,		,	Required □YES ⊠NO
CONTRACT START DATE	CONT	RACT END	DATE			TOTA	L MAXIN	MUM CONTRACT
May 4, 2015, or date of execution,	Augus	st 31, 201	5			AMOL		
whichever is later.						\$350,	000.00	
PURPOSE OF CONTRACT:								
The purpose of this contract is for Ga	artner to pro	ovide exp	ert au	ıidand	ce in develor	oina th	e analy	/tical
infrastructure for monitoring and repo								
(SIM) initiative.	,g	anii oyot	o po		ianos anas			ovalion model
(2)								
ATTACHMENTS/EXHIBITS. When the bo			n an X,	the fo	llowing Exhibi	ts/Attac	hments	are attached and
are incorporated into this Contract Amendr	ment by refer	ence:						
Exhibit(s) (specify):Attachment(s) (specify): Attachment A	HCA Analyt	ice Interni	nerahili	ity and	l Measuremen	ıt Analy	tice Stra	iteay and Roadman
Scope of Work	, I IOA Allalyt	ics, interop	perabii	ity and	i weasuremen	it Allaly	iios Otre	itogy and redadinap
Schedule(s) (specify): Schedule A, Statement of Work								
No Exhibits/Attachment								
The terms and conditions of this Contra		•		•				
understanding between the parties superseding and merging all previous agreements, writings, and								
communications, oral or otherwise, regarding the subject matter of this Contract. The parties signing below warrant that they have read and understand this Contract, and have authority to execute this Contract. This								
Contract shall be binding on HCA only				ive at	illionly to ext	scule i	ilis Coi	iliaci. IIIIS
CONTRACTOR SIGNATURE	aport signa	PRINTED		AND TI	TIF			DATE SIGNED
			/		- 			22 5.5.1.25
HCA SIGNATURE		PRINTED	NAME /	AND TI	TLE			DATE SIGNED

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Attachment A: HCA Analytics, Interoperability and Measurement Analytics Strategy and Roadmap Scope of Work

1 **OVERVIEW**

1.1 PURPOSE

The purpose of this Contract is for Contractor to provide expert guidance in developing the analytical infrastructure for monitoring and reporting on health system performance under the State Innovation Model (SIM) initiative. Gartner will support HCA in creating a roadmap for assessing and developing content for the analytics, interoperability and measurement of the State's SIM grant implementation Plan. This roadmap will be in the context of the larger overall analytics strategies for the HCA, and address data architecture, data management, as well as the tools and procurement strategy to implement the plan. This includes leveraging information exchange capabilities to improve capacity to support care delivery, clinical-community linkages and improved health outcomes.

1.2 STATEMENT OF WORK (SOW)

The Contractor shall provide the goods and/or services and staff as described in Schedule A, Statement of Work.

2 SPECIAL TERMS AND CONDITIONS

2.1 TERM

Subject to its other provisions, the Term under this Contract shall be from May 4, 2015 or the date of execution, whichever is later, through August 31, 2015, unless terminated sooner as provided herein.

HCA, at its sole discretion, may extend this Contract for up to three (3) additional three-month periods, unless terminated sooner as provided herein.

Work performed without a contract or amendment, signed by authorized representative of both parties, shall be at the sole risk of the Contractor. HCA shall not pay any costs incurred before a contract or any subsequent amendment is fully executed.

2.2 DES FILING REQUIREMENT

10-Day Filing (Sole source contracts over \$10,000)

The provisions of Chapter 39.26 RCW require HCA to file this sole source Contract with the Department of Enterprise Services (DES) for approval. No filed contract is effective, nor shall work commence under it, until the tenth (10th) working day following the date of filing and subject to DES approval.

2.3 COMPENSATION AND PAYMENT

The Maximum Not-to-Exceed Compensation, which includes any allowable expenses, payable to Contractor for the performance of all things necessary for or incidental to the performance of work as set forth in Schedule A, Statement of Work is \$350,000.00. Contractor's compensation for services rendered shall be based on the Statement of Work, Section D. In no event shall the payments to Contractor exceed the Maximum Not-to-Exceed

Compensation associated with this Contract.

Source of Funds	Amount
Federal	\$185,500.00
State	\$136,500.00
PEB	\$28,000.00
Total	\$350,000.00

Travel costs are included in the fixed cost total. There will be no additional reimbursement for travel expenses.

2.4 BILLING AND INVOICE

Contractor shall submit correct invoices to the HCA Contract Manager for all amounts to be paid by the HCA hereunder.

All invoices submitted must meet with the approval of the Contract Manager or his/her designee prior to payment, which approval shall not be unreasonably withheld.

Contractor shall only submit invoices for Services or Deliverables as permitted by this section of the Contract. The Contractor shall not bill the HCA for services performed under this Contract, and the HCA shall not pay the Contractor if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for such services/deliverables.

Contractor shall submit properly itemized invoices to include the following information, as applicable:

- 2.4.1 HCA Contract number K1474;
- 2.4.2 Contractor name, address, phone number;
- 2.4.3 Description of Services;
- 2.4.4 Date(s) of delivery;
- 2.4.5 Net invoice price for each item:
- 2.4.6 Applicable taxes;
- 2.4.7 Total invoice price; and
- 2.4.8 Payment terms and any available prompt payment discount.

HCA will return incorrect or incomplete invoices to the Contractor for correction and reissue. The Contract Number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract.

Invoices shall describe and document to the HCA's satisfaction, a description of the work performed; the progress of the project; and fees. If expenses are invoiced, provide a detailed breakdown of each type. Any single expenses in the amount of \$50.00 or more must be accompanied by a receipt in order to receive reimbursement.

Payment shall be considered timely if made by the HCA within thirty (30) days of receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor. (Note: Failure to submit a properly completed IRS form W-9 may result in delayed payments.)

Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) days after the Contract expiration date. Belated claims shall be paid at the discretion of the HCA and are contingent upon the availability of funds.

The HCA may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract. HCA will not make advance payments or payments in anticipation of services or supplies to be provided under this Contract.

Electronic Payment: The State of Washington prefers to utilize electronic payment in its transactions. Contractor will be expected to register as a statewide vendor. This allows Contractors to receive payments from all participating state agencies by direct deposit, which is the State's preferred method of payment. Forms necessary for registration can be obtained at www.ofm.wa.gov.

2.5 CONTRACT CONTACT INFORMATION

The individuals listed below, or their successors shall be the main points of contact for services provided under this Contract. HCA's Contract Manager or his/her successor is responsible for monitoring the Contractor's performance and shall be the contact person for all communications regarding contract performance, deliverables, and invoices. The Contract Manager has the authority to accept or reject the services provided and if satisfactory, certify acceptance of each invoice submitted for payment. The HCA Executive Contact is also available for information regarding this Work Order. Notifications regarding changes to this section must be in writing (e-mail) and maintained in the project file, but will not require a formal contract amendment.

CONTRACTOR Contract Manager Information	Health Care Authority Contract Manager Information	Health Care Authority Executive Contact Information		
Aaron Lee	John Specht	Adam Aaseby		
Managing Partner	IT Manager	Director, Chief Information Officer		
980 9 th Street	Health Care Authority	Health Care Authority		
Sacramento, CA 95814	626 8 th Avenue SE	626 8 th Avenue SE		
Phone: 1-916-414-2243	Olympia, WA 98501	Olympia, WA 98501		
aaron.lee@gartner.com	Phone: (360) 725-1299	Phone: (360) 725-1241		
_	John.specht@hca.wa.gov	adam.aaseby@hca.wa.gov		

2.6 ACCEPTANCE PROCESS FOR DELIVERABLES

Upon completion of a deliverable, the Contractor shall submit the deliverable to the HCA Contract Manager for approval. The Acceptance process shall commence.

2.6.1 Acceptance shall be based on conformance with the acceptance criteria established for each deliverable. HCA will issue written notice of acceptance or provide Contractor with a notification of rejection, which must include documentation of the specific ground for the rejection, outlining items not in compliance with the acceptance criteria.

2.6.2 Correction of Deficiencies Process. If a deliverable is rejected, Contractor shall have ten (10) days to correct items documented in the HCA notification or rejection, unless otherwise agreed by the parties. Following the receipt of Contractors notice that the Work has been corrected, HCA shall issue a written notice of acceptance or provide Contractor with a notification of rejection, which shall include documentation of the specific ground for the rejection, outlining items not in compliance with the acceptance criteria.

The project schedule shall be adjusted accordingly in the event that a dispute regarding the method or accuracy of the corrections causes a delay. If the deliverable(s) fails to comply with the deliverable acceptance criteria after Contractor's second attempt to correct the Work, HCA shall determine the appropriate corrective action(s) up to and, including declaring a breach of Contract.

2.7 LEGAL NOTICES

Whenever one party is required to give notice to the other under this Contract, it shall be deemed given if mailed by United States Postal Services, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

2.7.1 In the case of notice to the Contractor, notice will be sent to:

Attention: Aaron Lee Gartner 980 9th Street Sacramento, CA 95814

2.7.2 In the case of notice to HCA, send notice to:

Attention: Contract Administrator
Health Care Authority
Division of Legal and Administrative Services
Contract Services
Post Office Box 42702
Olympia, WA 98504-2702

- 2.7.3 Notices shall be effective on the date delivered, as evidenced by the return receipt or the date returned to the sender for non-delivery other than for insufficient postage.
- 2.7.4 Either party may change its address for notification purposes at any time by mailing a notice in accord with this Section, stating the change and setting for the new address, which shall be effective on the tenth (10th) day following the effective date of such notice unless a later date is specified.

2.8 ORDER OF PRECEDENCE

Each of the items listed below is incorporated by reference into this Contract. In the event of an inconsistency, the inconsistency shall be resolved by giving precedence in the following order:

- 1. Applicable Federal and State of Washington statutes and regulations;
- 2. Special Terms and Conditions;
- 3. General Terms and Conditions:
- 4. Schedule A Statement of Work;
- 5. Attachment A- HCA Analytics, Interoperability and Measurement Analytics Strategy and Roadmap Scope of Work;
- 6. Any other provision, term or material incorporated herein by reference or otherwise incorporated.

2.9 CONTRACTOR STAFF

Contractor must use best efforts to ensure that only agreed upon personnel are assigned to work under this Contract and that personnel assigned to this Contract are available until the completion of this Contract. Any proposal by Contractor for changes, replacement, or substitution of agreed upon personnel during the term of the Contract shall be submitted to the HCA Contract Manager in writing. The HCA Contract Manager has the sole discretion to accept or reject such proposal.

3 GENERAL TERMS AND CONDITIONS

3.1 DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- 3.1.1 "Allowable Expense" means an expenditure which meets the test of the appropriate OMB Circular (see Section I. Federal Compliance of Attachment 1). The most significant factors affecting allowability of expenses are: 1) they must be necessary and reasonable, 2) they must be allocable, 3) they must be authorized or not prohibited under state or local laws and regulations, and 4) they must be documented.
- 3.1.2 "Authorized representative" means the person in HCA to whom signature authority has been delegated, in writing, acting within the limits of his/her authority.
- 3.1.3 "Business Associate" is as defined in 45 CFR, Part 160.103 and includes any entity that performs or assists in performing a function or activity involving the use/disclosure of Individually Identifiable Health Information or involving any other function or activity regulated by HIPAA; or provides legal, accounting, actuarial, consulting, data aggregation, management, accreditation, or financial service where the services involve Individually Identifiable Health Information.
- 3.1.4 "Business Days and Hours" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.
- 3.1.5 "Confidential Information" means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental

- services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.
- 3.1.6 "Contract" means this Contract document, all schedules, exhibits, attachments, and amendments.
- 3.1.7 "Contractor" means that firm, provider, organization, individual or other entity performing services under this Contract. It shall include any subcontractor retained by the prime contractor as permitted under the terms of this Contract.
- 3.1.8 "Effective Date" means the first date this Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Contract.
- 3.1.9 "Equipment" means an article of non-expendable, tangible property having a useful life of more than one year and an acquisition cost of \$5,000 or more.
- 3.1.10 "Health Care Authority" (HCA) means the Washington State Health Care Authority, any division, section, office, unit or other entity of HCA, or any of the officers or other officials lawfully representing HCA.
- 3.1.11 "Protected Health Information" has the same meaning as in the HIPAA Rules except that in this Contract the term includes only information created by any of its contractors, or received from or on behalf of HCA, and relating to Clients. "PHI" means Protected Health Information.
- 3.1.12 "Statement of Work" or "SOW" means a detailed description that captures and defines the work activities, deliverables, and timeline the Contractor is required to perform under this Contract. SOW is usually incorporated in a contract, indirectly be reference or directly as an attachment.
- 3.1.13 "Subrecipient" means a contractor operating a federal or state assistance program receiving federal funds and having the authority to determine both the services rendered and disposition of program. See OMB Circular A-133 for additional detail.
- 3.1.14 "Successor" means any entity or individual which, through amalgamation, consolidation, or other legal succession becomes invested with rights and assumes burdens of the first contractor/vendor or any person who succeeds to the office, rights, responsibilities or place of another.

3.2 ACCESS TO DATA/ OWNERSHIP

In compliance with Chapter 39.26.180(2) of RCW, the Contractor shall provide access to data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

Subject to payment of fees specified in an applicable SOW, Contractor grants to HCA ownership of any Deliverable originally created for and submitted to HCA. Contractor shall retain sole and exclusive ownership of the Contractor tools, methodologies, questionnaires, responses, and proprietary research and data generated in the course of performing the consulting services, together with all intellectual property rights therein (collectively, the "Contractor Materials"). Contractor grants to HCA a perpetual, non-exclusive, royalty-free license to use and to disclose during the course of its internal business operations any Contractor Materials embodied in a Deliverable. Unless the Deliverable is a Request for Proposal (RFP) or similar document intended to be distributed by HCA to the public, HCA shall not make the Deliverables available, in whole or in part, to anyone outside of HCA, or quote excerpts from the Deliverables to the public, without the prior written consent of Contractor. Notwithstanding the foregoing, HCA may share the Deliverables with (i) its outside auditors and/or accountants, (ii) third parties who have signed appropriate confidentiality agreements with HCA who are engaged by HCA to review or implement suggestions or to further research the issues contained in the Deliverables, (iii) governmental or regulatory bodies as required by law; and (iv) as required by the Washington Public Records Act, Chapter 42.56 RCW.

Nothing contained in this Agreement shall preclude Contractor from rendering services to others or developing work products that are competitive with, or functionally comparable to, the consulting services performed. Contractor shall not be restricted in its use of ideas, concepts, know-how, data and techniques acquired or learned in the course of performing the consulting services, provided that Contractor shall not use or disclose any of HCA's Confidential Information.

3.3 ADVANCE PAYMENT PROHIBITED

No advance payment shall be made for services furnished by the Contractor pursuant to this Contract.

3.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

3.5 ASSIGNMENT

With the prior written consent of HCA, which consent shall not be unreasonably withheld, Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to HCA that may arise from any breach of the sections of this Contract, Statements of Work, or warranties made herein including but not limited to, rights of setoff.

HCA may assign this Contract or Statements of Work to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve HCA of any of its duties and obligations hereunder.

3.6 ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.

3.7 CHANGE IN STATUS

In the event of substantive change in the legal status, organizational structure, or fiscal reporting responsibility of the Contractor, Contractor agrees to notify the HCA of the change. Contractor shall provide notice as soon as practicable, but no later than thirty (30) days after such a change takes effect.

3.8 CONFIDENTIAL INFORMATION PROTECTION

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

Contractors that may come into contact with Protected Health Information will be required to complete a Business Associate agreement, as required by federal or state laws, including HIPAA, prior to the commencement of any work.

Immediately upon expiration or termination of this Contract, Contractor shall, at HCA's option: (i) certify to HCA that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to HCA; or (iii) take whatever other steps HCA requires of Contractor to protect HCA's Confidential Information.

HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

The obligations set forth in this Section shall survive completion, cancellation, expiration, or termination of this Contract.

3.9 CONFIDENTIALITY BREACH- REQUIRED NOTIFICATION

Upon a breach or suspected breach of confidentiality, the Contractor shall immediately notify the HCA Privacy Officer. For the purposes of this Contract, "immediately "shall mean within one calendar day.

The Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to, sanctioning employees, notifying subjects, and taking steps necessary to stop further unauthorized access. The Contractor agrees to

indemnify and hold harmless HCA for any damages related to unauthorized use or disclosure of Confidential Information by the Contractor, its officers, directors, employees, Subcontractors or agents.

Any breach of this clause may result in termination of the Contract and the demand for return of all Confidential Information.

Contractor acknowledges the HCA is subject to chapter 42.56 RCW and that this Contract and any Work Orders shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with chapter 42.56 RCW, HCA shall maintain the confidentiality of all such information marked Proprietary Information in their possession. If a public disclosure request is made to view Contractor's Proprietary Information, HCA will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, HCA will release the requested information on the date specified

3.10 CONFLICT OF INTEREST

HCA may terminate this Contract, by written notice to the Contractor, if it is found, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts.

In the event this Contract is so terminated, HCA shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor.

3.11 CONFORMANCE

If any provision of this Contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.

3.12 COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. HCA shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

3.13 DEBARMENT

The Contractor, by signing this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Washington State or Federal department or agency from participating in transactions (debarred). The Contractor agrees to include the above requirement in any and all

subcontracts into which it enters, and also agrees that it will not employ debarred individuals. The Contractor shall immediately notify HCA if, during the term of this Contract, Contractor becomes debarred. HCA may immediately terminate this Contract by providing Contractor written notice, if Contractor becomes debarred during the term hereof.

3.14 DISPUTES

The parties shall use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue, without delay, to carry out their respective responsibilities under this Contract while attempting to resolve the dispute under this section. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein that cannot be resolved at the project management level, either party may submit a request for a dispute resolution to the HCA Contract Administrator who shall oversee the following Dispute Resolution Process: HCA shall appoint a representative to a dispute panel; the Contractor shall appoint a representative to the dispute panel; HCA's and Contractor's representatives shall mutually agree on a third person to chair the dispute panel. The dispute panel shall thereafter decide the dispute with the majority prevailing.

A party's request for a dispute resolution must:

- 3.14.1 Be in writing,
- 3.14.2 State the disputed issues,
- 3.14.3 State the relative positions of the parties.
- 3.14.4 State the remedies sought.
- 3.14.5 State the Contractor's name, address, and his/her department Contract number,
- 3.14.6 Be mailed to HCA Contracts Office, PO Box 42702, Olympia, WA 98504-2702 within thirty (30) calendar days after the party could reasonably be expected to have knowledge of the issue which he/she now disputes.

This dispute resolution process constitutes the sole administrative remedy available under this Contract. The parties agree that this resolution process shall precede any action in a judicial and quasi-judicial tribunal.

3.15 FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

This Contract is supported by federal funds that require compliance with the Federal Funding Accountability and Transparency Act (FFATA or the Transparency Act). The purpose of the Transparency Act is to make information available online so the public can see how federal funds are spent.

To comply with the act and be eligible to enter into this Contract, your organization must have a Data Universal Numbering System (DUNS®) number. A DUNS® number provides a method to verify data about your organization. If you do not already have one, you may receive a DUNS® number free of charge by contacting Dun and Bradstreet at www.dnb.com.

Information about your organization and this Contract will be made available on www.uscontractorregistration.com by HCA as required by P.L. 109-282. HCA's Attachment B, Federal Funding Accountability and Transparency Act Data Collection Form, is considered part of this Contract and must be completed and returned along with the Contract

3.16 FORCE MAJEURE

A party shall not be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to: acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

3.17 GOVERNING LAW

This Contract shall be governed, in all respects, by the law and statutes of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington and the venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

3.18 INDEMNIFICATION

<u>Person and/or Tangible Property</u> - Contractor agrees to indemnify, defend and hold harmless HCA, its employees, officers and agents, from and against any third party claims, demands, loss, damage or expenses (including reasonable attorney's fees and court costs) relating to bodily injury or death of any person or damage to real and/or tangible personal property directly caused by the negligence, intentional or willful misconduct of the Contractor, its personnel, or agents during the course of the Services under this Agreement.

Indemnity for Intellectual Property – Upon notification of a claim against HCA alleging any Deliverable infringes a copyright, US patent or trade secret of any third party, Contractor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against HCA. Contractor will not indemnify HCA however, if the claim of infringement is caused by (1) HCA's misuse or modification of the Deliverable; (2) HCA's failure to use corrections or enhancements made available by Contractor; (3) HCA's use of the Deliverable in combination with any product or information not owned or developed by Contractor. If any Deliverable is, or in Contractor's opinion is likely to be, held to be infringing, Contractor shall at its expense and option either: (a) procure the right for HCA to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing, or (d) direct the return of the Deliverable and refund to HCA the fees paid for such Deliverable.

3.19 INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of HCA. The Contractor will not hold himself/herself out as or claim to be an officer or employee of HCA or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

3.20 INDUSTRIAL INSURANCE COVERAGE

Prior to performing work under this Contract, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. Should the Contractor fail to secure industrial insurance

coverage or fail to pay premiums, as may be required under Title 51 RCW, HCA may deduct the amount of premiums and any penalties owing from the amount payable to the Contractor under the Contract and transmit the same to the Department of Labor and Industries, Division of Insurance Services. This provision does not waive any right under RCW 51.12.050 to collect from the Contractor amounts paid by HCA.

3.21 INSURANCE

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or subcontractor, or agents of either, while performing under the terms of this Contract.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

- 3.21.1 Commercial General Liability Insurance Policy Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- 3.21.2 Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance shall be required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is:
 - \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
- 3.21.3 The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name HCA and The State of Washington, its agents and employees as additional insured's under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct the insurers to give HCA 30 days advance notice of any insurance cancellation.

Upon request, Contractor shall submit to HCA, a certificate of insurance that outlines the coverage and limits defined in the *Insurance* section. If a certificate of insurance is requested, Contractor shall submit renewal certificates as appropriate during the term of the contract.

3.22 LEGAL AND REGULATORY COMPLIANCE

During the term of this Contract, Contractor shall comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract and all other applicable federal, state and local laws, rules, and regulations.

3.23 LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract.

3.24 LIMITATION OF AUTHORITY

Only the HCA Authorized Representative or his/her designee by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Authorized Representative.

3.25 NO THIRD-PARTY BENEFICIARIES

The HCA and the Contractor are the only parties to this contract. Nothing in this Contract gives or is intended to give any benefit of this contract to third parties or third persons. It is the intention of Contractor and HCA that no third party shall have the right to (i) rely on the Services provided by Contractor, or (ii) seek to impose liability on Contractor as a result of the Services or any Deliverables furnished to HCA.

3.26 NONDISCRIMINATION

During the performance of this Contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

3.27 OVERPAYMENT AND ASSERTION OF LIEN

In the event that overpayments or erroneous payments have been made to the Contractor under this Contract, HCA shall provide written notice to Contractor and Contractor shall refund the full amount to HCA within thirty (30) days of the notice. HCA may secure repayment, plus interest, if any, through the filing of a lien against the Contractor's real property, or by requiring the posting of a bond, assignment or deposit, or some other form of security acceptable to HCA.

3.28 PUBLICITY

The Contractor agrees to submit to HCA all advertising and publicity matters relating to this Contract wherein HCA's name is mentioned or, in HCA's judgment, the language used may infer or imply a connection with HCA's name. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of HCA.

3.29 RECORDS, DOCUMENTS, AND REPORTS

The Contractor shall maintain books, records, documents, magnetic media, receipts, invoices and other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records including materials generated under this

Contract, shall be subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement. The Contractor shall retain such records for a period of six (6) years after the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

3.30 REGISTRATION WITH DEPARTMENT OF REVENUE

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

3.31 REMEDIES NON-EXCLUSIVE

The remedies provided in this Contract shall not be exclusive, but are in addition to all other remedies available under law.

3.32 RIGHT OF INSPECTION

The Contractor shall provide access to its facilities to HCA, or any of HCA's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

3.33 LIMITATION OF LIABILITY

Neither party shall be liable for any consequential, indirect, special or incidental damages, such as damages for lost profits, business failure or loss arising out of use of the Deliverables or the Services, whether or not advised of the possibility of such damages. Except for liability for personal injury or death or for damage to property caused by the intentional, negligence or willful misconduct of Contractor or its employees, Contractor's total liability arising out of this Agreement and the provision of the Services shall be limited to the fee paid by HCA under the Statement of Work under which such liability arises.

3.34 SAFEGUARDING OF INFORMATION

The use or disclosure by any party, of any information concerning HCA, for any purpose not directly connected with the administration of HCA's or the Contractor's responsibilities with respect to services provided under this Contract, is prohibited except by written consent of HCA.

3.35 SEVERABILITY

If any provision of this Contract, or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this Contract that can be given effect without the invalid provision, and to this end the provisions or application of this Contract are declared severable.

3.36 SITE SECURITY

While on HCA premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations may be grounds for revoking or suspending security access to these facilities. HCA reserves the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify HCA.

3.37 SUBCONTRACTING

Neither the Contractor, nor any Subcontractors, shall enter into subcontracts for any of the work contemplated under this Contract without prior written approval of HCA. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to HCA for any breach in the performance of the Contractor's duties.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons confidential information without the express written consent of HCA or as provided by law.

If, at any time during the progress of the work, the HCA determines in its sole judgment that any subcontractor is incompetent or undesirable, the HCA shall notify the Contractor, and the Contractor shall take immediate steps to terminate the subcontractor's involvement in the work.

The rejection or approval by the HCA of any subcontractor or the termination of a subcontractor shall not relieve the Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to the HCA.

The HCA has no contractual obligations to any subcontractor or vendor under contract to the Contractor. The Contractor is fully responsible for all contractual obligations, financial or otherwise, to their subcontractors.

3.38 SUBRECIPIENT

3.38.1 General

If the Contractor is a sub-recipient of federal awards as defined by Office of Management and Budget (OMB) Circular A-133 and this Contract, the Contractor shall:

- 3.38.1.1 Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity:
- 3.38.1.2 Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws,

- regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs:
- 3.38.1.3 Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- 3.38.1.4 Incorporate OMB Circular A-133 audit requirements into all agreements between the Contractor and its Subcontractors who are sub-recipients;
- 3.38.1.5 Comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation;
- 3.38.1.6 Comply with the applicable requirements of OMB Circular A-87 and any future amendments to OMB Circular A-87, and any successor or replacement Circular or regulation; and
- 3.38.1.7 Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to http://ojp.gov/about/offices/ocr.htm for additional information and access to the aforementioned Federal laws and regulations.)

3.38.2 Single Audit Act Compliance

If the Contractor is a sub-recipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:

- 3.38.2.1 Submit to the Authority contact person the data collection form and reporting package specified in OMB Circular A-133, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
- 3.38.2.2 Follow-up and develop corrective action for all audit findings; in accordance with OMB Circular A-133, prepare a "Summary Schedule of Prior Audit Findings."

3.38.3 Overpayments

If it is determined by the Authority, or during the course of a required audit, that the Contractor has been paid unallowable costs under this or any Program Agreement, the Authority may require the Contractor to reimburse the Authority in accordance with OMB Circular A-87.

3.39 SURVIVABILITY

The terms and conditions contained in this Contract, which by their sense and context are intended to survive the completion, cancellation, termination, or expiration of the Contract, shall survive.

3.40 SYSTEM SECURITY

Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA's Information Systems Manager. Contractor-supplied computer equipment, including both hardware and software, must be reviewed by the HCA Information Services prior to being connected to any HCA network connection and that it must have up to date anti-virus software and personal firewall software installed and activated on it.

Unauthorized access to HCA networks and systems is a violation of HCA Policy 06-03 and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of the contract and other penalties.

3.41 TAXES

Unless otherwise indicated, HCA will pay sales and use taxes, if any, imposed on the services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. HCA, as an agency of Washington State government, is exempt from property tax.

3.42 TERMINATION

3.42.1 TERMINATION FOR CAUSE

In the event the Contractor violates any material term or condition of this Contract or any Work Order, or fails to fulfill in a timely and proper manner its material obligations under this Contract or any Work Order, as applicable, then complies with the conditions of this Contract in a timely manner, HCA has the right to suspend or terminate this Contract. HCA shall notify the Contractor, in writing, of the need to take corrective action. If corrective action is not taken within three (3) days, or other time period agreed to in writing, the Contract may be terminated. HCA reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by HCA to terminate the Contract.

In the event of termination, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time. If it is determined that the Contractor: (i) was not in default, or (ii) failure to perform was outside of his or her control, fault or negligence, the termination shall be deemed a "Termination for Convenience" and the provisions of Subsection 3.43.3 will apply.

3.42.2 TERMINATION DUE TO CHANGE IN FUNDING, SUSPENSION OR CONTRACT RENEGOTIATION

If the funds HCA relied upon to establish this Contract are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, after the effective date of this contract but prior to the normal completion of this Contract:

- 3.42.2.1 At HCA's discretion, the Contract may be renegotiated under the revised funding conditions.
- 3.42.2.2 At HCA's discretion, HCA may give notice to Contractor to suspend performance when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.
 - 3.42.2.2.1 During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
 - 3.42.2.2.2 When HCA determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
 - 3.42.2.2.3 If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
- 3.42.2.3 HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice. HCA shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to HCA in the event the termination option in this section is exercised.

3.42.3 TERMINATION FOR CONVENIENCE

When, at HCA's sole discretion, it is in the best interest of the State, HCA may terminate this Contract in whole or in part by providing ten (10) Business Day's notice. If this Contract is so terminated, HCA shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

3.42.4 TERMINATION PROCEDURES

Upon termination of this Contract, HCA, in addition to any other rights provided in this Contract or available under law, may require the Contractor to deliver to HCA any property specifically produced or acquired for the performance of such part of this Contract as has been terminated.

HCA shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services which are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case the HCA shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. HCA may withhold from any amounts due the Contractor such sum as HCA determines to be necessary to protect HCA against potential loss or liability.

Upon receipt of notice of termination, and except as otherwise directed by the HCA, the Contractor shall:

- 3.42.4.1 Stop work under the Contract on the date, and to the extent specified in the notice:
- 3.42.4.2 Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- 3.42.4.3 Assign to HCA, in the manner, at the times, and to the extent directed by HCA, all the rights, title, and interest of the Contractor under the orders and subcontracts so terminated; in which case HCA has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts:
- 3.42.4.4 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of HCA to the extent HCA may require, which approval or ratification shall be final for all the purposes of this clause;
- 3.42.4.5 Transfer title to HCA and deliver in the manner, at the times, and to the extent directed by HCA any property which, if the Contract has been completed, would have been required to be furnished to HCA;
- 3.42.4.6 Complete performance of such part of the work as shall not have been terminated by HCA; and
- 3.42.4.7 Take such action as may be necessary, or as HCA may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which HCA has or may acquire an interest.

3.42.5 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the authority of HCA to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, HCA may terminate this Contract in whole or in part, under Section 3.43.3 of this Contract. No penalty will accrue to HCA in the event this section is exercised. This Section shall not be construed so as to permit HCA to terminate this Contract in order to acquire similar Services from a third party.

3.43 WAIVER

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing signed by HCA and attached to the original Contract.

3.44. WARRANTIES

THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CONTRACTOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR AS TO ACCURACY, COMPLETENESS OR ADEQUACY OF INFORMATION. HCA RECOGNIZES THE UNCERTAINTIES INHERENT IN ANY ANALYSIS OR INFORMATION THAT MAY BE PROVIDED AS PART OF THE SERVICES, AND ACKNOWLEDGES THAT THE SERVICES ARE NOT A SUBSTITUTE FOR ITS OWN INDEPENDENT EVALUATION AND ANALYSIS AND SHOULD NOT BE CONSIDERED A RECOMMENDATION TO PURSUE ANY COURSE OF ACTION. CONTRACTOR SHALL NOT BE LIABLE FOR ANY ACTIONS OR DECISIONS THAT HCA MAY TAKE BASED ON THE SERVICES OR ANY INFORMATION OR DATA CONTAINED THEREIN. HCA UNDERSTANDS THAT IT ASSUMES THE ENTIRE RISK WITH RESPECT TO THE USE OF THE SERVICES.